THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No.13939 of 1998

ORDER:

1 Petitioner is a dealer in food grains having licence under A.P. Scheduled Commodities (Licencing and Distribution) Order 1982 (the Order). As the lorry bearing No.AAE 5846 loaded with 100 quintals of rice consigned from petitioner's mill to the F.C.I godown at Ongole did not reach the destination, second respondent raided the mill premises of the petitioner and found several violations of the Control Orders passed under the Essential Commodities Act, 1955 (the Act) and seized the stocks found there and suspended its licence and took its proprietor to custody under the provisions of the Prevention of Black Marketing Act, but as the advisory committee recommended for his release, he was released. When the fourth respondent directed sale of seized stock, petitioner filed W.P.No.13384 of 1988 in which a learned Judge of this Court passed the following order on 02.09.1988.

> "Petitioner's mill was inspected and certain quantities of essential commodities were seized. Admittedly 6-A proceedings are pending. Therefore, I do not want to go into the merits of the controversy. In view of the fact that the seized commodities are not meant to public distribution system, the petitioner is a miller, there shall be a direction not to sell the goods and to release them to the petitioner on his furnishing a bank guarantee for the value thereof pending 6-A proceedings. W.P. is disposed of. No costs."

In pursuance thereof, the District Collector (the first respondent) issued the following proceedings:

> PROCEEDINGS OF THE COLLECTOR AND DISTRICT MAGISTRATE: PRAKASAM DISTRICT
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> Present: Dr. A.Jayaprakash Narayan, I.A.S.,
>
> Rc.H.1/6.A/75/88 Dated 07.09.1988
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> Sub: C.S. – E.C.Act, 1955 – Prakasam Dist – Epurupalem (v) – Seizure of E.Cs from Sri Kanakadurga Traders, Epurupalem – Report u/s.6-A of the E.C.Act – Interim disposal orders – Reg.
>
> Read:
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> 1. Report u/s. 6-A of the E.C.Act, 1955 filed by the C.I. (VC) Ongole in Cr.No.64/88.
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> 2. Progs. Of the Collector, Ongole in Rc.H1/6A/75/88, dated 31.8.88,
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> 3. Orders of the Hon'ble High Court of A.P. in W.P.No.13384/88 Dt.2.9.88,

4. Other connected papers.

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O R D E R

The Honourable High Court of Andhra Pradesh, Hyderabad issued a direction in the ref. 3rd read above not to sell the goods and to release the seized stocks of 633 qtls. of paddy, 760.9 qtls. of rice and 40 qtls. Of Broken rice, seized from Sri Kanakadurga Traders, Epurupalem on production of bank guarantee for the value thereof. Thus in supercision of the orders issued in this office ref.2nd read above, the above seized stocks are ordered to be released to the writ petitioner Sri T.Seetharamaiah on production of bank guarantee worth Rs.3.50 lakhs.

The respondent is therefore directed to produce bank guarantee for Rs.3.5 lakhs and obtain necessary release orders.

Sd/- B.Raja Rao
For Collector, Ongole.

As per the above direction of the first respondent, petitioner furnished a bank guarantee for Rs.3,50,000/-. Thereafter a show cause notice dated 27.4.1994 was issued to the petitioner under Section 6-A of the Act, as to why the seized stock should not be confiscated in favour of the Government, to which the petitioner submitted its explanation. After considering the explanation of the petitioner, first respondent directed invocation of the bank guarantee towards the value of the stock seized vide his proceedings RC H1/6A/75/88 dated 05.12.1988. Aggrieved thereby petitioner preferred an appeal to the third respondent under Section 6-C of the Act. By the proceedings dated 08.08.1994 impugned in this writ petition third respondent confirmed the orders of the first respondent. Hence this Writ Petition.

2 The main contention of the learned counsel for the petitioner is that inasmuch as the documents referred to in the show cause notice issued by the first respondent to the petitioner were not furnished to the petitioner, petitioner is put to any amount of prejudice, and as non furnishing of relevant material as held in ***Smt. Varshaben Bharatbhai Shah Vs. Appropriate Authority and others***[1], ***Dhakeswari Cotton***

Mills Ltd, Vs. Commissioner of Income Tax, West Bengal[2], ***E. Vittal and another Vs. Appropriate Authority and others***[3] and ***Vijay Kumar Sharma Vs. Appropriate Authority***[4]***,*** is a ground for setting aside the proceedings and remitting the case to the concerned authority for deciding the case after furnishing all the relevant documents and giving a fresh opportunity, the proceedings impugned are liable to be set aside and the case has to be remitted to the first respondent for fresh disposal.

3. The contention of the learned Government Pleader is that the petitioner who did not even state in his explanation to the show cause notice that he was handicapped to give proper explanation for non furnishing of the documents mentioned in the references in the show cause notice or in his grounds of appeal before the third respondent cannot at this stage of writ petition be heard to say that the order of the first respondent is vitiated due to the non furnishing of the documents mentioned in the references in the show cause notice, which in fact are within the knowledge of the petitioner, and as such he cannot in any event claim ignorance of the contents of those documents and as the order impugned was passed only after considering the written explanation of the petitioner and as this petition is filed years after the passing of the order impugned, petitioner is not entitled to any relief.

4 In reply, the contention of the learned counsel for the petitioner is that inasmuch as the order impugned was not served on the petitioner personally, but was served on his counsel and as his counsel did not handover that copy to the petitioner he was not aware of the passing of the order impugned and had come to know about that order only after the final show cause notice why the bank guarantee furnished by him should not be forfeited was served on him and thereafter the petitioner contacted his counsel and came to know that his counsel was involved in an accident and was taking treatment and then only the said counsel informed the petitioner that he could not send copy of the order served on him earlier and handed over the copy

of the impugned order served on him to the petitioner just before filing of the Writ Petition and so there are valid grounds for the delay in fling the Writ Petition and in any event since the Writ Petition is already admitted, it may not be dismissed merely on the ground of delay.

5 The order impugned in the Writ Petition is dated 08.08.1994. This petition is filed on 13.05.1998 i.e. more than 3 ½ years after the passing of the order impugned. The contention of the learned counsel for the petitioner that inasmuch as the Writ Petition was admitted, it cannot be dismissed on the ground of delay cannot be accepted because admission of a Writ Petition does not prevent the Court from deciding the question of delay on merits after appearance of the other side, because the opposite side can always take a plea that the writ petitioner is not entitled to the relief sought because of the delay in coming to Court.

6 In para 7 of the affidavit filed in support of this Writ Petition it is stated that the order impugned dated 08.08.1994 was not communicated to him but was communicated to his counsel who was on record. In para 8 of the affidavit it is stated that after receipt of the proceedings of the fourth respondent dated 21.04.1998, he contacted his advocate and came to know that he was bedridden due to a car accident and went to his house and met him personally and enquired about the case and it is only when his advocate gave the copy of the order on 04.05.1998 did he come to know about the passing of the order impugned.

7 From the statement of the petitioner in para 7 of his affidavit it is clear that the order impugned in this petition was served on his counsel immediately after its being pronounced. It is well known that notice to agent is notice to principal. So the petitioner cannot be heard to say that since he was not served with a copy of the order impugned he had no knowledge of the order impugned till his counsel handed over the copy served on him to him.

8 The above apart, for reasons best known to him petitioner did

not disclose in his affidavit the date on which his counsel was involved in an accident and the period for which he was bedridden. Merely on the basis of the statement of the deponent to the affidavit filed in support of this petition, which is mute about the date of accident, it cannot, prima facie, be taken that the counsel for the petitioner was involved in an accident in 1994 and was taking treatment till 1998. When the petitioner wanted to take shelter under his counsel being involved in an accident a ground for the delay, he ought to have mentioned the date on which his counsel was involved in accident and the period for which he was bedridden and should have filed the affidavit of either his counsel or his junior or the clerk of his advocate swearing to the fact that the copy of the order received was not given or sent to the petitioner immediately after receipt an that petitioner was not informed about the result of the case. Since no such details are found in the affidavit filed in support of this Writ Petition and no affidavit of the counsel or his clerk or his junior is filed, I am unable to accept the explanation for the inordinate delay of more than 3 ½ years in filing this Writ Petition after the disposal of the case by the third respondent.

9 It is well known that delay is one of the grounds for not granting a relief to a Writ Petitioner. Petitioner who wants to invoke the jurisdiction of this Court under Article 226 of the Constitution of India should not only act promptly but should also come to Court with clean hands and bonafides, which are lacking in this case. For that reason alone the Writ Petition is liable to be dismissed.

10 Even otherwise also, petitioner is not entitled to the relief sought in the petition, because the decisions relied on by the learned counsel for the petitioner have no application to the facts of this case. All those decisions arise out of cases arising under the provisions of the Income Tax Act. In this case the stock of the petitioner was seized on the basis that it is indulging in black marketing. The stock seized and the grounds for its seizure respondent well known to the petitioner. The documents referred to in the show cause notice, sent to the petitioner are:

1. Report under Section 6 A of the Act filed by Inspector Vigilance, Ongole,
2. Proceedings of the Collector Ongole in RC H1/6A/75/88 dated 7.9.1988,
3. Other connected papers.

Petitioner cannot claim ignorance of the report of the Inspector of Vigilance, Ongole registered under Section 6.A of the Act because, he admittedly, was kept under detention under the provisions of the Prevention of Black Marketing Act, and so must have been furnished with the copies of F.I.R and other relevant documents at the time of his detention. Moreover it is not even the case of the petitioner that he does not know the contents of the F.I.R. The proceedings of the Collector Ongole in RC H1/6A/75/88 dated 07.09.1988, as seen from the file produced before me by the learned Government Pleader, is the notice calling upon the petitioner to furnish bank guarantee in pursuance of the order of the Court in Writ Petition 13384 of 1988 filed by him, copy of which was marked to the petitioner also. For that reason, and as the petitioner furnished bank guarantee in pursuance of that notice, it is easy to see that petitioner is aware of the proceedings of the Collector dated 07.09.1988. The show cause notice in fact contains the details relating to the facts on which the proposed action is intended to be taken. No fact which is hidden from the petitioner or which was not within the knowledge or notice of the petitioner is taken into consideration before first respondent passed the order of confiscation. Therefore, by no stretch of imagination, can it be said that any information, or fact which is not within the knowledge of the petitioner, was made use of for passing the order of confiscation.

11 Petitioner, who submitted an explanation to the show cause notice issued by the first respondent, did not take a plea that he was handicapped by the alleged withholding of any relevant information before passing the order of confiscation. After considering the explanation of the petitioner only first respondent passed the order of confiscation, which was confirmed by the third respondent, in an appeal preferred to it by the petitioner.

12 So I find no merits in this Writ Petition and hence the Writ Petition is dismissed. No order as to costs.

29.11.2007

kvsn

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[1] **1996 Income Tax Reports (Vol. 221) page 819**

[2] **AIR 1955 SC 65**

[3] **1996 Income Tax Reports (Vol. 221) page 760**

[4] **1996 Income Tax Reports (Vol. 220) page 509**